

## CHAPTER 3

### SPECIFIED OR UNSAFE BLOOD ALCOHOL CONCENTRATION

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#### 3.1 GENERALLY

Commonly referred to as *per se* statutes, the Utah State Legislature has determined that a person is guilty of DUI if his or her blood alcohol concentration is at a certain level regardless of the level of impairment that person exhibits. For all drivers, the *per se* limit is .08 grams or greater as stated in 41-6a-502 (1)(a). If however, a repeat offender, within ten years of the previous conviction, is 21 years of age or older, and has a passenger in the vehicle under 16, then the *per se* limit is .05 grams or greater as stated in 41-6a-502 (1)(d).

There are additional statutes which relate to commercial drivers, but those are license restrictions not, by definition DUI, and are discussed in Chapter 20 of this manual.

#### 3.2 STATUTES

The following are the enumerated driving offenses related to DUI in Utah:

**41-6a-502. Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration.**

- (1) A person may not operate or be in actual physical control of a

vehicle within this state if the person:

(a) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

. . .

(c) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation or actual physical control; or

(d) (i) is 21 years of age or older;

(ii) has a passenger under 16 years of age in the vehicle at the time of operation or actual physical control;

(iii) has committed a violation of this Subsection (1)(d) within ten years of a prior conviction as defined in Subsection 41-6a-501(2); and

(iv) (A) has sufficient alcohol in the person's body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .05 grams or greater at the time of the test; or

(B) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation or actual physical control.

(2) Alcohol concentration in the blood shall be based upon grams of alcohol per 100 milliliters of blood, and alcohol concentration in the breath shall be based upon grams of alcohol per 210 liters of breath.

(3) A violation of this section includes a violation under a local ordinance similar to this section adopted in compliance with Section 41-6a-510.

### **3.3            CONSTITUTIONALITY**

The Utah Court of Appeals has held that the prohibition of driving with a blood or breath alcohol content greater than .08 is constitutional. In *Orem vs. Crandall*, 760 P.2d 920 (Utah App. 1988), the court held that the statute "does not create a conclusive presumption because . . . section 41-6-44(1) allows the defendant to challenge the accuracy of the test on any relevant ground". *Id* at 924.

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